[251] F.M.S. REPORTS

G. BENJAMIN v. Y. M. ESMAILJEE

[O.C.J. (Cussen J.) December 5, 1935]
[Negri Sembilan Civil Suit No. 7 of 1935]

Common Gaming Houses Enactment, 1912, ss.4, 7 and 9 — Public lottery — Sale of Turf Club lottery tickets to the public by a member — Suit by one of the public against the member for proceeds of a winning ticket.

The defendant was a member of the Penang Turf Club and as such bought more than two hundred tickets in a lottery held by that club. This lottery was private because the issue of tickets was confined to members of the club.

The defendant kept two tickets for himself and sold the remainder to the plaintiff and other persons, who were not members of the Penang Turf Club.

One of the tickets sold to the plaintiff won a prize. The Penang Turf Club paid over the prize money to the defendant, who paid over a small part thereof to the plaintiff and refused to pay over the balance amounting to $7,671. In consequence the plaintiff sued the defendant for this balance.

Held: that the plaintiff's cause of action was based on an illegal and void contract, namely a separate and distinct public lottery in which both he and the defendant were principals and consequently the plaintiff's claim failed.

Jeff for the plaintiff.

Farr for the defendant.

Cur. Adv. Vult.

Cussen J.: In this suit the defendant raises a question of law which it was decided should be taken as a preliminary issue. He contends that on the claim as set out in the plaint together with certain facts admitted, the plaintiff has no cause of action as the claim arises out of an illegal contract.

The facts are, for the purposes of this argument, as follows:—

The defendant in July, 1934, was a member of the Penang Turf Club.

The Club held a sweep or lottery on the result of one of the races on the 28th July, 1934.

The lottery was a private lottery, the issue of tickets being confined to the members of the club.

The defendant, as a member, bought from the club over two hundred tickets in this lottery. His object in doing so was to sell the tickets to persons who were not members of the Turf Club.

He tells us he kept two tickets for himself and sold the rest to various persons. Among the purchasers of tickets from the defendant was the plaintiff who bought ten of the tickets from him.

The plaintiff is not a member of the Turf Club.

One of the tickets sold to the plaintiff — a ticket issued to and in the name of the defendant as a member of the club — won the second prize in the sweep value $8,236.

The Penang Turf Club has paid this sum to the defendant.

The plaintiff states he has received only $565, and that the defendant refuses to pay him the balance of $7,671.

He now sues to recover this sum.

The question now raised, i.e. whether the plaintiff has a cause of action, is in my opinion determined by the decision of the Court of Appeal in the case of *Kader Batcha* v. *Public Prosecutor,* [1935] F.M.S.L.R. 18; [1935] M.L.J. 251.

By a majority [Thomas C.J. and Huggard C.J. (S.S.] it was held that a person, who acts as did the defendant in this case, is promoting and organising a separate and distinct lottery of his own, making use of the tickets in the private Turf Club lottery for that purpose, and as he sells the tickets in this separate lottery to members of the public it is an illegal public lottery.

The Straits Settlements Court of Appeal, in January, 1935, arrived at the same conclusion on a case in which the facts were exactly similar — *Rex* v. *Latip bin Haidin,* [1935] M.L.J. 84. The decision of the Court was unanimous (Huggard C.J., Prichard and Terrell JJ.).

The position, in law, in this present case, then is that the defendant organised, and promoted, and sold tickets in a public lottery and the plaintiff bought some of the tickets.

A public lottery is an illegal transaction and both the person who promotes and carries on the public lottery and sells the tickets therein, and the person who buys a ticket commit offences punishable under sections 4 and 7 of the Common Gaming Houses Enactment, 1912.

And under section 9 of the Enactment every sale of a lottery ticket is void and no action is maintainable by any person in respect of any such sale or contract except by the purchaser for the return of the money or other consideration paid thereon.

The plaintiff and defendant are parties to an agreement and contract which is illegal and void. The plaintiff is the winner of a prize in the separate lottery carried on by the defendant, his cause of action is based upon the illegal and void contract between him and the defendant in which contract — in the separate and distinct lottery — they were principals.

No question arises here of principal and agent as the lottery in question is the separate, distinct lottery organised by the defendant.

I am of opinion that the defendant must succeed on this question of law. I find that the plaintiff has no cause of action.

The suit is therefore dismissed with costs.

Suit dismissed.

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[252] K. ARUMUGAM v. J. K. R. LEONARD [252]

[A.C.J. (Thomas C.J., Burton Ag. C.J. (S.S.) and Terrell J.) January 9, 1936]
[Negri Sembilan Civil Appeal No. 3 of 1935]

The Land Code, 1926, Schedule XXIV(a) — Charge — Payment of interest after due date — Interest by way of damages.

The appellant executed a charge in the statutory form, Schedule XXIV(a), Land Code, 1926, in favour of the respondent. The material parts of this charge were as follows:—

"Firstly, that I (the chargor) will pay to him the said chargee, the sum of $10,000 on the 28th day of March, 1929.

Secondly, that if any default be made in payment of the interest due upon this charge, the said principal sum